

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

Sean Christopher Clemmons,)	Case No. 0:16-cv-1305-DCC
)	
Plaintiff,)	
)	
v.)	ORDER
)	
United States of America, Warden)	
Travis Bragg, Captain Hicks, Health)	
Service Administrator Canada,)	
Lieutenant Dunbar, Officer Strickland,)	
Mays, Mills, Doctor Berrios, MLP H.)	
Hansen, K. Robinson, Officer Godbey,)	
Officer Legett,)	
)	
Defendants,)	
_____)	

This matter is before the Court on Defendants' Motion for Summary Judgment. ECF No. 130. Plaintiff filed a Response in Opposition, Defendant filed a Reply, and Plaintiff filed a Sur-Reply. ECF Nos. 153, 155, 157. In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.), this matter was referred to United States Magistrate Judge Paige J. Gossett for pre-trial proceedings and a Report and Recommendation ("Report"). The Magistrate Judge ordered additional briefing on January 24, 2018.¹ ECF No. 172. Defendants filed supplemental briefing on February 26, 2018. ECF No. 184.

¹ The Magistrate Judge requested additional briefing as a result of the recent Supreme Court decision in *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1855 (2017), whereby the Supreme Court emphasized that expanding the *Bivens* remedy is disfavored, and further

On July 26, 2018, the Magistrate Judge issued a Report recommending that the Motion for Summary Judgment be granted in part and denied in part. ECF No. 215. Plaintiff filed objections to the Report. ECF No. 223. The Court granted in part, denied in part, and held in abeyance in part the Motion for Summary Judgment; the claims that were held in abeyance were recommitted to the Magistrate Judge for further evaluation. ECF No. 210. On December 13, 2018, the Magistrate Judge recommended that summary judgment be granted with respect to Plaintiff's remaining claims. ECF No. 248. The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so. Plaintiff has filed no objections, and the time to do so has passed.

LEGAL STANDARD

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. See *Mathews v. Weber*, 423 U.S. 261 (1976). The Court is charged with making a de novo determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The Court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. See 28 U.S.C. § 636(b). The Court will review the Report only for clear error in the absence of an objection. See *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating

highlighted the “special factors” a court must perform to determine whether a *Bivens* action should be available in a new context.

that “in the absence of timely filed objection, a district court need not conduct a de novo review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” (citation omitted)).

ANALYSIS

After considering the record in this case, the applicable law, and the Report of the Magistrate Judge, the Court finds no clear error and agrees with the Report’s recommendation.² Accordingly, the Court adopts the Report by reference in this Order. The Motion for Summary Judgment [130] is **GRANTED** and with respect to Plaintiff’s claim for supervisory liability regarding his claim for deliberate indifference to serious medical needs against Defendants Bragg, Hicks, and Canada and his claim for supervisory liability under the FTCA. As there are no remaining claims against Defendant Hicks, he is dismissed from this action.

IT IS SO ORDERED.

s/ Donald C. Coggins, Jr.
United States District Judge

January 9, 2019
Spartanburg, South Carolina

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

² The Court notes that Plaintiff filed a Motion Requesting for Findings to be Placed on Record Concerning Plaintiff’s “Bystander Liability” Claims on January 7, 2019. Out of an abundance of caution for a pro se Plaintiff, the Court has thoroughly reviewed this Motion and finds that it is not responsive to the Report.